IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12746 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AIYUBKHAN @ ABU MAHAMADKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12746 of 2004

MS BANNA DUTTA for MR AR SHAIKH for Petitioner No. 1

MRS HB PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 17th of July 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is in detention as bootlegger from 17th of July, 2004 in pursuance of the above order.

2. The grounds of detention placed on record reveal that a crime came to be registered against the petitioner before Prohibition Police Station, Eastern Zone, under Sections 66-(1)B, 65-AE, 81 and 116(1)B of the Bombay Prohibition Act, whereby it is alleged that the petitioner was found in possession of liquor to the tune of 103 bottles. The said offence came to be registered on 4th of April, 2004. The detaining authority exhaustively examined the investigation papers of the said crime registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting liquor knowing fully well that the consumption of liquor is injurious to the public health. As per the detaining authority, the petitioner, on account of the above material before him, was a bootlegger and his antisocial activity was required to be prevented forthwith because such activity was prejudicial to the maintenance of public order and adversely affecting the public health. Hence, the detaining authority passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Ms. Banna Dutta for the petitioner and learned AGP Mrs. H.B. Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was any material placed before the detaining authority to come to the conclusion that by the activity of the petitioner the public order was disturbed and public health was adversely affected. The fact of the present case is squarely covered by a decision of the Division Bench of this Court, in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex Court came to the conclusion that merely filing of criminal case under the

Bombay Prohibition Act against the detenu would not by itself lead to an interference that his activities were prejudicial to the maintenance of public order and adversely affecting to the public health. There must be some credible material before the detaining authority to come to a conclusion that the activity of the petitioner was affecting the public order. A line has to be drawn between "breach of public order " and "breach of law and order". The registration in this case a solitary crime against the petitioner, at the most, may be the breach of law and order, for which he can be tried and punished if he is found guilty, but the fact constituting criminal offence against the petitioner itself cannot be construed to be prejudicial to the maintenance of public order especially in absence of credible material before the detaining authority, the subjective satisfaction reached by the detaining authority in this regard. Therefore, the subjective satisfaction reached by the detaining authority cannot be said to be legal, valid and in accordance with law, so far as it relates to the breach of public order is concerned. In this view of the matter, order under challenge is required to be quashed and set aside.

7. In the result the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 17th of July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Aiyubkhan alias Abu Mahamadkhan Pathan is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair